

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

JOHN GACHAGO,  
Plaintiff

v

BRISTOL MYERS SQUIBB, and  
AMERICAN EXPRESS,  
Defendants

CIVIL ACTION NO.

05-10141-RGS

**PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiff, John Gachago, in the above captioned matter and, pursuant to F.R.Civ.P.65, respectfully moves this Honorable Court to issue a preliminary injunction enjoining Defendant, American Express, including the agents, servants, and employees and any other representative of said defendant, from continuing to report the monies in dispute, \$1,219, on Mr. Gachago's credit report.

In support hereof, Plaintiff states that this action concerns Mr. Gachago's ability to refinance his home. On January 27, 2005 Mr. Gachago was told that his mortgage company would not process his request to refinance his home (*See* attached letter from Champion Mortgage and non-confidential portions of emails between client and his attorney). Then on May 3, 2005, once again inquiring about refinancing, Plaintiff was told that due to the adverse credit report and the recently increased interest rates, the refinance rate would be 8.3% (see attached non-confidential portion of email).

In addition to becoming a victim of escalating interest rates, the Plaintiff's inability to refinance his home has restricted him from accessing \$35,000 in his home's equity to proceed with and to fulfill his obligation in a pending Foreign Real Estate Development Investment. This investment is extremely time sensitive (see attached letter from Agimba & Associates) and in addition to the \$7,500 already invested, Mr. Gachago stands to lose \$378,000 more in projected profits.

Plaintiff has asked Defendant, American Express, to voluntarily withdraw or suspend the reporting of this disputed debt pending outcome of trial, but they declined. Now we implore this Court to issue a preliminary injunction so that Mr. Gachago can proceed with his personal financial opportunities and so that his financial future is not held hostage by the small sum of monies in question that would very minimally impact the defendant

In accordance therewith, Plaintiff states that Plaintiff will be irreparably harmed if a preliminary injunction as aforesaid is not issued. Plaintiff further states that the balance of equities favors the granting of this motion, in that the temporary limitation to be imposed upon any rights of Defendant as requested herein is minimal in comparison to the potential harm to the Plaintiff should such limitation not be imposed.

Respectfully submitted Dated May 5, 2005,

John Gachago,

By his Attorney,



Doug Surprenant      BBO# 651975  
Law Office of Doug Surprenant  
55 N. Franklin Street  
Holbrook, MA 02343  
(781) 767-9300

**NOTICE OF HEARING ON MOTION**

To: Paige A. Scott Reed

**Please take notice** that the undersigned will present for hearing the within Plaintiff's Motion for Preliminary Injunction before the United States District Court for the District of Massachusetts on Thursday May 5, 2005 or as soon thereafter as counsel can be heard.

Dated: May 4, 2005


  
\_\_\_\_\_  
Doug Surprenant

**CERTIFICATE OF SERVICE**

**The undersigned hereby certifies** that a true copy of the within Plaintiff's Motion for Preliminary Injunction was this day served upon all parties to this action by mailing same, first class postage prepaid, to all Attorneys of record.

SIGNED under the pains and penalties of perjury,

Dated: May 4, 2005

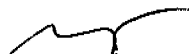
  
\_\_\_\_\_  
Doug Surprenant

**NOTICE OF HEARING ON MOTION**

To: Eve Slattery

**Please take notice** that the undersigned will present for hearing the within Plaintiff's Motion for Preliminary Injunction before the United States District Court for the District of Massachusetts on Thursday May 5, 2005 or as soon thereafter as counsel can be heard.

Dated: May 4, 2005

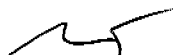
  
\_\_\_\_\_  
Doug Surprenant

**CERTIFICATE OF SERVICE**

**The undersigned hereby certifies** that a true copy of the within Plaintiff's Motion for Preliminary Injunction was this day served upon all parties to this action by mailing same, first class postage prepaid, to all Attorneys of record.

SIGNED under the pains and penalties of perjury,

Dated: May 4, 2005

  
\_\_\_\_\_  
Doug Surprenant

FEB-02-2005 WED 03:41 PM

FAX NO.

P. 02/02



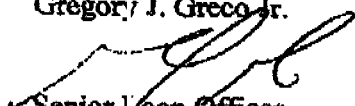
01/27/2005

To Whom It May Concern:

This letter is in regards to Mr. Gachago's American Express business account. The account number is 017002319018307699. Due to the delinquency on this account that was not his responsibility it is effecting his credit grade on his refinance. We would appreciate any assistance on this matter to verify that this account was not his responsibility. Thank you in advance for your cooperation.

Sincerely,

Gregory J. Greco Jr.



Senior Loan Officer  
Champion Mortgage  
Division of Key Bank  
800-242-6746 x 7645

Subj: **settlement proposal**  
Date: 4/30/2005 3:39:30 PM Eastern Standard Time  
From: DS5848  
To: jgachaj054@comcast.net

John let me know what you think - is it factually correct and tone good.

Were you turned down for refinance - the letter from Champion does not say so - it only says "it is effecting his credit grade on his refinance."

Edited Portion  
work correct

Subj: **Re: settlement proposal/ Response**  
Date: **5/2/2005 12:25:01 PM Eastern Standard Time**  
From: **jgachago84@comcast.net**  
To: **DS5848@aol.com**

Doug

Sorry I didnt respond earlier. The form and content looks good. A few notes to be made however:

1. Champion mortgage definitively told me on the phone that they could not proceed with the refinance until the Amex balance was paid.
2. *Please Amend: I believe you meant to say if we had a HIGHER credit rating in this section "If they had a lower credit rating, the approximate mortgage finance rate would have been fixed at 4.5%. In contrast, the Gachagos had to accept a 6.9% variable rate mortgage."*

Edited Portion  
WORK PRODUCT

COPY

May 2, 2005

Dwyer & Collora, LLP  
Eve Slattery  
600 Atlantic Avenue  
Boston, MA 02210

**Re: John Gachago v. Bristol Myers Squibb et al.**

**I. Settlement Proposal  
II. Notice of Preliminary Injunction  
III. Notice to Amend Pleadings**

Dear Eve,

**I. Settlement Proposal:** Pursuant to F.R.Civ.P.26(f) and LR 16.1(C), we propose  
a settlement proposal amount of

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